

BEST AVAILABLE COPY

MAR-13-2006 12:07 FROM:DERGOSITS & NOAH LLP 4157056383

TO:USPTO

P.1/11

RECEIVED
CENTRAL FAX CENTER

MAR 13 2006

DERGOSITS & NOAH LLP

ATTORNEYS AT LAW

FOUR EMBARCADERO CENTER, SUITE 1450
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 705-6377
FACSIMILE: (415) 705-6383
<http://www.dergnoah.com>

FACSIMILE TRANSMISSION COVER SHEET

TO: Mark A. Fadok, Examiner FACSIMILE NO.: (571) 273-8300
TELEPHONE NO.:

FROM: Michael E. Dergosits

DATE: February 14, 2006 PAGES: 11 (including cover)

OUR REF. NO.: 106.58

RE: Application Serial No. 09/412,404

COMMENTS: These were intended to be Exhibit A to the Response filed on January 17, 2006, which was resubmitted on January 31, 2006. Please consider them in connection with the response.

Hard Copy To Follow: Yes xNo

CONFIDENTIALITY NOTE

THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED FOR THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE PERSON RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL TRANSMISSION TO US VIA THE U.S. POSTAL SERVICE. THANK YOU.

http: //www. iht. com/ articles/ 1995/ 02/ 06/ cyber. php

Yahoo! Finance Yahoo! Google Wall's Fargo Sign On eBay Amazon News (1301) Reuters

By Richard Covington Special to the International Herald Tribune

Monday, February 6, 1995

lib. demon. co. uk

But not all the best-laid plans of
mouses and multinationals evolve
without growing pains. Last year's
technological buzz at MIDEW was the
much-heralded New Leaf
Entertainment, a joint venture of IBM
Corp. and the video chain Blockbuster
Entertainment Corp., that would
enable customers to mix and match
their own recording artists - creating a
CD of Frank Sinatra recordings, for
example, along with those of George
Michael and Alice in Chains.

As brilliant as the idea appeared, the
major record labels stepped in to call
foul, denying - for the time being at
least - copyrights on these customer-
recipe CDs.

Internet address: CyberScaHL pe@iht-

Michael Dergosits

From: Joshua Kaplan [josh@intouchgroup.com]
Sent: Thursday, November 17, 2005 2:51 PM
To: Michael Dergosits
Subject: various Newleaf articles

http://www.qorvus.net/WSJ_article/WSJ_com%20-%20Article.htm

"One drawback is that previous attempts at installing kiosks in music stores have recently failed to engage consumers. At the turn of the decade, IBM teamed up with Blockbuster to unveil NewLeaf Entertainment, which downloaded music onsite, but the project failed to ignite much interest. Another format was attempted by Personics, which allowed consumers to create their own mix tapes at stores. But with the record companies refusing to license their biggest hits for fear they'd hurt album sales, Personics also quickly faltered."

[http://www.rollingstone.com/news/story/_/id/5925643/thebeatles?
pagcid=rs.newsarchive&pageregion=mainregion&rnd=1132266623859&has-player=true](http://www.rollingstone.com/news/story/_/id/5925643/thebeatles?pagcid=rs.newsarchive&pageregion=mainregion&rnd=1132266623859&has-player=true)

http://www.minidisc.org/sony_kiosk.html

<http://www.ce.surrey.ac.uk/Contrib/Edupage/1995/08/31-08-1995.html#6>

<http://www.iht.com/articles/1995/02/06/cyber.php>
(the PDF)

11/18/2005

P.3/11

TO:USPTO

MAR-13-2006 12:07 FROM:DERGOSITS & NOAH LLP 4157056383



THE WALL STREET JOURNAL. O N L I N E

July 15, 2002

SPECIAL REPORT: E-COMMERCE

Looking for Harmony

New technology could bring record stores into the digital age. Why hasn't it?

By JASON FRY

Imagine this: You walk into a record store looking for a CD -- say, Bruce Springsteen's 1973 "The Wild, the Innocent & the E Street Shuffle." The record store doesn't have it, but there's no reason to leave empty-handed.

Kiosks in the store offer information, including song previews, album art and reviews, about thousands of U.S. releases -- many more than are in stock. You find the Springsteen album and discover you can have a copy made for you while you continue shopping. Within minutes, the songs have been downloaded over a secure computer network and burned onto a recordable CD, along with color printouts of the album art and liner notes. Everybody's happy -- you've got your CD, and the retailer, the record label and Bruce Springsteen have all made a sale.

Sounds simple. But it isn't.

That's the lesson learned by RedDotNet, a unit of Alliance Entertainment Corp., a Coral Gables, Fla., music distributor and supplier of back-end services, in more than two years of working with the recording industry in trying to make such a system a success. The technological underpinnings of the system work. In-store tests suggest customers like it. Yet the system remains stillborn.

Why? In part it's because RedDotNet (<http://www.reddotnet.com/>¹) got caught by a sea change in retailers' attitudes that's left them focused on moving as much of their current inventory as they can, rather than looking for new sales opportunities. But recording-industry critics say that a deeper problem has been the industry's refusal, at least so far, to license enough content to make the system viable.

Meantime, RedDotNet and its rivals have retrenched, rolling out systems that offer lots of information about CDs but not the ability to create them on demand. Such a step will have to wait until the recording industry is ready to accept it. And those who have come before warn that change could be a long time coming.

"The recording industry has traditionally been hostile to every new technology as it emerges,"

E-COMMERCE

- Special Report Main Page
- Clicks in Bricks
- Beyond Bookings
- Web Watch
- Technical Adviser
- Public Disservice
- Renew It or Lose It
- Rules & Regs
- Click and ... Drive?
- The Empire Builder
- Behind the Curtain
- Deja Vu

Entertainment Inc., a joint venture between **International Business Machines Corp.** and **Blockbuster Entertainment Corp.** New Leaf was opposed by the leading record labels and dismantled in early 1995, with most of its intellectual property and assets becoming the property of **Digital On-Demand**, a Carlsbad, Calif., company founded by engineer Tom Szabo in December 1997. The company was known formally as **Digital On-Demand**, and in practice as **RedDotNet**.

Working from offices above a grocery store, Mr. Szabo and his team picked up where New Leaf had left off, and soon found an interested customer in **Walt Disney Co.** In April 1998, the company struck a deal with Disney to put kiosks in Disney stores. There, visitors could preview songs from Disney's catalog and create compilation CDs, complete with printed covers and labels.

The first such CD was created on May 22, 1998 at Disneyland in Anaheim, Calif. The RedDotNet kiosks proved popular; that first machine is still in operation today. The deal with Disney, of Burbank, Calif., was an important test that Digital On-Demand passed, but in time it would seem the exception that proved the rule. What worked with one single company selling its own content in its own stores wouldn't fare as well with multiple companies' content being sold by a number of different retailers.

In June 1999, Digital On-Demand struck a deal with Sony Music Entertainment, a unit of Japan's Sony Corp., to digitally distribute its recordings. Two days later, retailers Virgin Entertainment Group and Trans World Entertainment Corp. agreed to install the RedDotNet kiosks in select music stores. Later that summer, deals followed with EMI Group PLC's EMI Recorded Music and retailer Wherehouse Entertainment Inc. Universal Music Group, now a part of Vivendi Universal SA, came on board in June 2000, and Bertelsmann AG unit BMG Entertainment followed suit in January 2001.

RedDotNet seemed poised to succeed. But it didn't play out that way. Anthony Deen was vice president of retail design and brand development for Virgin Entertainment Group's Virgin Megastores North America when RedDotNet's kiosk was tested at a new store in the Easton Mall in Columbus, Ohio, in July 1999. Mr. Deen, now vice president of design for New York-based design firm CDI Group, says that while the lines to use the RedDotNet kiosk in the Columbus store showed Virgin the concept was sound, the retailer wasn't impressed enough to roll out the machines elsewhere. He does note that many customers were not requesting out-of-stock albums but making compilations -- a sore point for some labels that fear they cut into sales of full-length CDs.

"We were ready to do Times Square and San Francisco as well," he says, "but Columbus never produced the kind of numbers that would make a retailer feel warm and fuzzy."

Changes were afoot at Digital On-Demand, too. In late 1999, the company was acquired by Alliance Entertainment in a stock-and-cash transaction valued at between \$75 million and \$125 million. (Mr. Szabo remained CEO for the transition and is now chairman and CEO of Telanetix, a Carlsbad, Calif., company specializing in real-time communications for educational institutions and corporations. He remains on Alliance's board.) In late 1999, the company said plans for a larger rollout would be deferred.

What went wrong? For one thing, the combination of Digital On-Demand's fees and the fees charged by the labels made the CDs expensive -- between \$21 and \$32 for a reproduction of an

album, according to Mr. Deen. Mr. Szabo says the Virgin kiosk was a technological proof of concept and not a test of economics, adding that the early test systems cost more because there weren't enough machines on the network to bring overall prices down.

Eric Weisman, Alliance's president and chief executive officer, points to another problem: changing goals for retailers. With consolidation afoot and retailers struggling, the top priority became to sell as much of the inventory they had on hand as possible. Making additional revenue by supplying out-of-stock items became a decidedly secondary goal, and that undercut any hopeful signs from RedDotNet's trials.

"We had the right technology, and we had the right technology that could be applied right then and there," Mr. Weisman says. He adds that RedDotNet needed to "time it better for when the marketplace realigned itself."

Another problem was the same one that plagued Personics: lack of content.

Mr. Weisman says he's not contractually permitted to say what percentage of a label's catalog was made available. But he does say that "quite honestly, you'd have to say [the record labels] were conservative with the granting of rights," adding that "we would have loved to have more catalog available at the time and expect to have more available in the future."

Pete Jones, president and CEO of BMG Distribution and BMG Associated Labels, says BMG has made thousands of titles available to RedDotNet, representing as much as 40% of BMG's catalog. "I think everybody would agree that it's a good idea," he says of RedDotNet's digital-distribution system, adding that BMG certainly hasn't given up on it.

Officials at the other labels that struck deals with RedDotNet declined to comment on digital distribution in general and RedDotNet in particular.

Meantime, RedDotNet hasn't been idle. It has shrunk its kiosks and aimed them at helping customers decide on purchases, a strategy intended to help retailers move as much in-stock inventory as possible.

The RedDots, which are kiosks about the size of a Frisbee, come in a variety of forms. One has a bar-code scanner, two dials and a pair of headphones. Hold up a shrink-wrapped CD to the scanner and you can preview all the songs on it. Another variety works the same way, but also offers a touch screen letting you search a database of about 200,000 CDs available in the U.S., getting sound clips, album art and reviews. Different RedDot models are updated in different ways, from DVD updates to DSL connections and satellite links, as often as weekly, to get new data supplied by Alliance's All Music Guide unit.

The Burning Question

One thing the system lacks is the very thing touted in the beginning: the ability to download and burn a copy of an out-of-stock CD. Mr. Weisman says the existing system can be retrofitted with that capability -- a point BMG's Mr. Jones makes as well. But when will the time be right for that? Mr. Weisman says he "would imagine sometime in 2003" Alliance will begin to look at such a combination. (In June, Alliance agreed to merge with **Liquid Audio Inc.**, a Redwood City, Calif., maker of software and services for delivering music downloads online, in a complicated reverse merger that also sets the stage for Alliance to become a publicly traded

company.) But any plan for 2003 will require a solution to the persistent problem of getting the record labels to license enough songs to make digital distribution of music feasible.

Mr. Sharples isn't holding his breath. "Everybody that's come along since then has tried to make the same arguments" Personics made, he says. "The content owners are as myopic today as they were back then. And, frankly, I don't see that changing."

--Mr. Fry is an editor for *The Wall Street Journal Online* in New York.

Write to Jason Fry at jason.fry@wsj.com²

URL for this article:

<http://online.wsj.com/article/0,,SB1026415126298307120.djm,00.html>

Hyperlinks in this Article:

(1) <http://www.reddotnet.com/>

(2) <mailto:jason.fry@wsj.com>

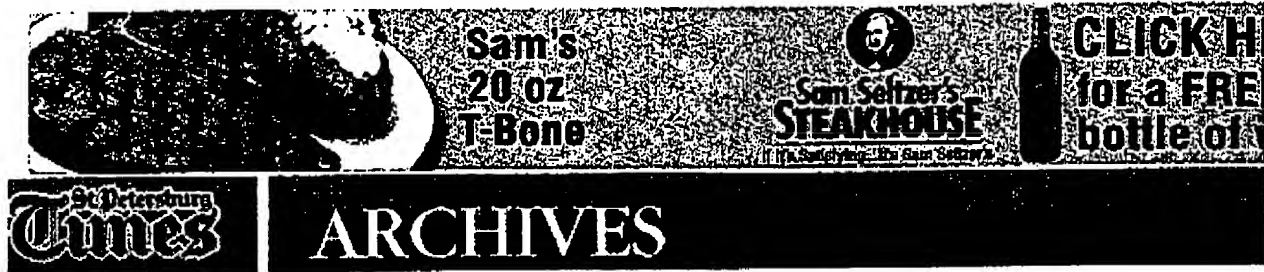
(3) <http://www.qorvus.com/>

Updated July 15, 2002

Copyright 2002 Dow Jones & Company, Inc. All Rights Reserved

Printing, distribution, and use of this material is governed by your Subscription agreement and Copyright laws.

For information about subscribing go to <http://www.wsj.com>



- Basic Search
- Advanced Search
- About the Archive
- Search Tips
- FAQ
- Customer Service
- Terms of Service
- Other Archives
- Home
- Linking & Online Usage
- St. Petersburg Times online:
- Today's Times
- Tampabay.com
- Weather
- Movies
- Calendar
- Yellow Pages
- Travel
- Classified
- Find a CAR
- Find a HOME
- Find a JOB
- Subscribe

 [Printer-Friendly Format](#)

[Start a New Search](#)
[Back to Results](#)

St. Petersburg Times

Blockbuster ends deal with IBM Series: BUSINESS BRIEFS; [CITY Edition]

St. Petersburg Times. St. Petersburg, Fla.: Feb 8, 1995. pg. 2.E

Abstract (Document Summary)

Blockbuster Entertainment Group said it is ending the operations of a joint venture with International Business Machines Corp. that is researching new ways to distribute music, video games and CD-ROM titles, according to Bloomberg Business News.

TIME WARNER BUYS SYSTEM. Time Warner Inc. capped its ambitious cable television expansion Tuesday by agreeing to buy system operator Cablevision Industries Corp. for \$2.6-billion in stock and debt, a transaction that would let the company vie with Tele-Communications Inc. for the title of the nation's largest operator of cable systems.

Full Text (399 words)

Copyright Times Publishing Co. Feb 8, 1995

Blockbuster Entertainment Group said it is ending the operations of a joint venture with International Business Machines Corp. that is researching new ways to distribute music, video games and CD-ROM titles, according to Bloomberg Business News.

Blockbuster will incorporate the New Leaf Entertainment Inc. operations into its technology unit and offer jobs to many of the venture's two dozen employees.

The idea behind the New Leaf joint venture was to let customers sample music and video games at stores, then let the stores produce the compact discs on request.

TIME WARNER BUYS SYSTEM. Time Warner Inc. capped its ambitious cable television expansion Tuesday by agreeing to buy system operator Cablevision Industries Corp. for \$2.6-billion in stock and debt, a transaction that would let the company vie with Tele-Communications Inc. for the title of the nation's largest operator of cable systems.

PRODUCTIVITY RISES. American business productivity improved 2.2 percent in 1994 for a fifth straight year, boosted by the largest output

growth since 1984. At the same time, businesses held labor costs to the smallest gain in 30 years.

TWENTIETH CENTURY ACQUIRES FUND. Twentieth Century Cos. will acquire Benham Group for about \$150-million, according to Bloomberg Business News. The merger, creating the nation's No. 16 mutual fund firm, would be the industry's third biggest, behind Franklin Resources Inc.'s acquisition of the Templeton funds in 1992 and Mellon Bank Corp.'s purchase of Dreyfus Corp. last August, analysts said.

LINCARE PROFITS RISE. Lincare Holdings Inc. of Clearwater said this week its profits rose 31 percent to \$10.7-million, or 38 cents per share, on sales of \$55-million in the company's fourth quarter ending Dec. 31. During the same quarter in 1993, Lincare posted profits of \$8.1-million, or 29 cents per share. The medical supplier's 1994 earnings rose 34 percent to \$38-million, or \$1.34 per share, compared with \$28.3-million, or \$1.01 per share, in 1993.

SEARS HAS STRONG YEAR. Sears, Roebuck and Co.'s best retail performance in a decade powered the rejuvenated company to higher profits for the fourth quarter and all of 1994. The nation's third-largest retailer reported fourth-quarter profits rose nearly 26 percent to \$685-million, or \$1.74 a share, from \$545-million, or \$1.39 a share, during the same period of 1993. For the full year, Sears reported profits of \$1.45-billion, or \$3.66 a share, compared with \$2.37-billion, or \$6.13 a share, for 1993. Earnings for both years were affected by special items.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Document types: DIGEST
Section: BUSINESS
Text Word Count: 399
Document URL:

ProQuest Archiver

Copyright © 2005 St. Petersburg Times

Michael Dergosits

From: Joshua Kaplan [josh@intouchgroup.com]
Sent: Wednesday, November 16, 2005 11:57 AM
To: Michael Dergosits
Subject: AMG screen shots

Here are screen shots of the AMG site.

when we tried to sample, and it took us to the registration page, it states on that page:

"The content you requested is available only to registered members"

"Registration is free and offers great benefits. Click here to register if you are not a registered member of allmusic."

"Please be aware that your browser must accept cookies in order to successfully login so that we can identify your account. You may also need to adjust your firewall or browser security to login"

<http://www.allmusic.com/cg/amg.dll?p=amg&sql=60:>

Membership and Registration.

allmusic.com offers certain features and content that are available only to Registered Members. Registration requires you to provide certain information, including a valid email address. Children under the age of 13 may not become Registered Members. If you choose to become a Member of allmusic.com, you agree that you will not allow others to use your password and /or account and that you are solely responsible for maintaining the confidentiality and security of your account.

http://www.allmusic.com/cg/amg.dll?p=amg&sql=32:amg/info_pages/a_terms_of_service.html

Does it get much cleaner than this for '916 infringement????

11/18/2005

P.11/11

TO:USPTO

MAR-13-2006 12:10 FROM:DERGOSITS & NOAH LLP 4157056383

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☒ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☒ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☒ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.